

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

TRAXCELL TECHNOLOGIES, LLC.,
Plaintiff,

v.

VERIZON WIRELESS PERSONAL COMMUNICATIONS,
Defendant.

6:20-CV-01175-ADA

SCHEDULING ORDER AND OPINION REGARDING MISSED DEADLINE

The Court considers Traxcell's January 19, 2022, Unopposed Motion for Extension of Time to file an opposition to Defendant Verizon Wireless Personal Communications' November 15, 2021, Motion to Dismiss Traxcell's Third Amended Complaint. Dkt. Nos. 58, 45. Traxcell moves for a 50-day extension to its original deadline of November 29, 2021. Dkt. No. 58.

According to Traxcell’s attorney Mr. William P. Ramey, III, “[t]he requested extension is not for purposes of delay The missed filing was in error. Due to the response falling in the Thanksgiving Holiday period, the response was missed.” *Id.*

Mr. Ramey's error will delay the case. The Court set the Markman hearing for January 26, 2022. Dkt. No. 51. Mr. Ramey filed Traxcell's Opposition 50 days late, on January 18, 2022. Dkt. No. 55. If the Court grants the extension, the Court must then wait for Defendant's reply to the Opposition. The Court will not conduct the scheduled Markman hearing without first resolving the motion to dismiss because Defendant moved to dismiss U.S. Pat. Nos. 10,701,517 and 10,743,135, which make up two of the three patents remaining in this case. Dkt. No. 45. The Court will not expend its time construing dismissed patents at Markman. But due to Mr. Ramey's late filing, the Court cannot yet rule on whether U.S. Pat. Nos. 10,701,517 and 10,743,135 remain in the case.

Motions for extensions of time “are committed to the trial court’s discretion.” *Two-Way Media LLC v. AT&T, Inc.*, 782 F.3d 1311, 1314 (Fed. Cir. 2015) (finding no abuse of discretion when the lower court refused to extend an appeal deadline).

The timing in this case resembles *Two-Way Media*. There, the District Court sent a notice of electronic filing to AT&T’s counsel on November 22, 2013 and updated the description of orders on its docket on November 25 without sending new notices to the parties. *Id.* at 1313. These docket filings triggered the appeal deadline, but AT&T failed to file a timely notice of appeal. *Id.* The District Court found it “very troublesome[] that for almost 52 days after the entry of the orders,” none of the Defendants’ counsel checked the status of the case.” *Two-Way Media, LLC v. AT&T Operations, Inc.*, No. SA-09-CA-00476-OLG, 2014 WL 12789645, at *3 (W.D. Tex. Feb. 6, 2014).

Here, the Court finds it even more troubling because counsel bears more responsibility than in *Two-Way Media*. Although Plaintiff’s response deadline fell on November 29, just after Thanksgiving, Plaintiff’s counsel received an accurate electronic notice of Plaintiff’s motion on November 15, well before the holidays. Plaintiff’s counsel should have docketed the due date. Neither notices nor deadlines “falling in the Thanksgiving Holiday period” justify a 50-day extension that delays Markman. Dkt. No. 58; *Two-Way Media*, 782 F.3d at 1313.


Next, Traxcell implores the Court to grant the extension “in the interests of justice” because the substance of the filing makes the same arguments as a timely-filed, previous opposition to a motion to dismiss to the second amended complaint. Dkt. No. 58. Unlike *Two-Way Media*, here the non-moving party does not oppose the extension. Solely because Defendant does not oppose the extension in the interest of justice, the Court **GRANTS** Traxcell’s motion for extension.

All parties **SHALL TAKE NOTICE** that this Court is not inclined to grant future, opposed motions for extension of time by repeatedly late filers. *E.g., MCOM IP, LLC v. CSI, Inc.*, No. 6:21-cv-00196-ADA, Dkt. No. 28 (filing late response to motion to stay, Dkt. No. 27) (W.D. Tex. Dec. 15, 2021);¹ *MCOM IP, LLC v. NCR Corp.*, No. 6:21-cv-00325-ADA, Dkt. No. 21 (filing late Case Readiness Status Report) (W.D. Tex. Aug. 12, 2021); *AML IP, LLC v. ArtCraft Entertainment, Inc.*, No. 6:21-cv-00036-ADA, Dkt. No. 15 (filing late Case Readiness Status Report more than six months after the March answer, Dkt. No. 11) (W.D. Tex. Oct. 10, 2021).

CONCLUSION

The Court **GRANTS** Traxcell's motion for extension. The Markman hearing is **RESCHEDULED** for February 11, 2022, at 2:00 pm. Defendant's Reply to the Opposition, if any, is due Monday, January 24, 2022. Fact discovery opens as previously scheduled.

SIGNED this 20th day of January 2022.


ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE

¹ Counsel also emailed the Court on September 15, 2021, apologizing for missing the case status readiness report deadline, stating, "It was an accident and not to be repeated."